

CHAPTER NO. 404

HOUSE BILL NO. 680

By Representatives Williams, Garrett

Substituted for: Senate Bill No. 1361

By Senator Jackson

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 30, relative to the making, amending, revoking, and refusal to make anatomical gifts, and to amend the Uniform Anatomical Gifts Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 30, is amended by deleting Sections 68-30-103, 68-30-105, and 68-30-107 in their entirety.

SECTION 2. The following new sections are added to title 68, chapter 30 as appropriately designated sections:

Section 68-30-114.

(a) An individual of sound mind who is at least 18 years of age may make an anatomical gift for any of the purposes stated in Section 68-30-104, limit an anatomical gift to one or more of those purposes, or refuse to make an anatomical gift.

(b) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.

(c) A gift of all or part of the body pursuant to subsection (a) may also be made by a document of gift provided for on the reverse side of all Tennessee driver licenses. Such document of gift must comply with subsection (b). The gift becomes effective upon the death of the donor. Any hospital, hospital personnel, physician, surgeon, undertaker, law enforcement officer, or other person may rely upon such statement when signed by the owner of such license as a properly executed document of gift, and shall be immune from civil or criminal liability when acting in good faith upon the anatomical gift made pursuant thereto. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(d) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(e) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(f) A donor may amend or revoke an anatomical gift, not made by will, only by:

- (1) a signed statement;
- (2) an oral statement made in the presence of two individuals;
- (3) any form of communication by a terminal patient addressed to a physician or surgeon; or
- (4) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(g) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (f).

(h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(i) An individual may refuse to make an anatomical gift of the individual's body or part of the body by a writing signed in the same manner as a document of gift or any other writing used to identify the individual as refusing to make an anatomical gift. A terminal patient may refuse to make an anatomical gift by oral statement or other form of communication.

(j) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under the following section.

(k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (i).

Section 68-30-115.

(a) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

- (1) the spouse of the decedent;
- (2) an adult son or daughter of the decedent;
- (3) either parent of the decedent;
- (4) an adult brother or sister of the decedent;
- (5) a grandparent of the decedent; and
- (6) a guardian of the person of the decedent at the time of death.

(b) An anatomical gift may not be made by a person listed in subsection (a) if:

- (1) a person in a prior class is available at the time of death to make an anatomical gift;
- (2) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or
- (3) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(4) If a decedent leaves one or more minor children and subdivisions (a)(1) and (2) of this section are not applicable, the wishes of such minor children shall be sought to the extent appropriate and practicable given the age of and any other factors and circumstances relative to the ability of such minor children to participate in the decision, and the wishes of the next of kin, before an anatomical gift may be made by a person listed in subdivisions (a)(3) through (6).

(c) An anatomical gift by a person authorized under subsection (a) must be made by (i) a document of gift signed by the person or (ii) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(d) An anatomical gift by a person authorized under subsection (a) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(e) A failure to make an anatomical gift under subsection (a) is not an objection to the making of an anatomical gift.

(f) The rights of the donee created by the gift are paramount to the rights of others except as provided by section 68-30-108(a).

(g) gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

Section 68-30-116. The Department of Safety shall at the earliest practicable time provide the ability for the electronic signature of a document of gift in connection with the electronic renewal of a Tennessee driver license. Such electronic signature shall be valid as if written.

SECTION 3. This act shall take effect upon July 1, 2001, the public welfare requiring it.

PASSED: June 11, 2001


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 19th day of June 2001


DON SUNDQUIST, GOVERNOR